

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 02-24
FM Broadcast Stations.	)	RM-10360
(Harrodsburg and Keene, Kentucky)	)	
	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: July 3, 2002**

**Released: July 19, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making*<sup>1</sup> issued at the request of Mortenson Broadcasting Company of Central Kentucky, LLC ("petitioner"), licensee of Station WJMM-FM, Harrodsburg, Kentucky. Petitioner filed comments in support of its proposal, reiterating its intention to file the necessary application to effectuate its proposal. We received no other comments on this proposal.

2. The *Notice* proposed to substitute Channel 257A for Channel 257C3 at Harrodsburg and reallocate Channel 257A from Harrodsburg to Keene, Kentucky, as the community's first local aural transmission service, and modify the license for Station WJMM-FM to reflect the changes. This proposal was filed pursuant to Section 1.420(i) of the Commission's Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>2</sup>

3. In support of its petition, petitioner stated that its proposal will not deprive the community of Harrodsburg, 1990 U.S. Census population 7,335 persons, of its only local aural transmission service.<sup>3</sup> It further states that the community of Keene, population 200 persons, is a community for allotment purposes. It notes that Keene has its own post office and zip code, a road sign designating its borders, businesses within its borders, and a group of citizens who have signed a petition attesting to their belief that Keene is a "distinct population grouping."<sup>4</sup> It points out that Keene is not part

<sup>1</sup> 17 FCC Rcd 2232 (2002).

<sup>2</sup> The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130 ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1988).

<sup>3</sup> It notes that daytime Station WHBN(AM), Harrodsburg, Kentucky, operates with 46 watts at night.

<sup>4</sup> See *Memorandum Opinion and Order* in MM Docket No. 84-231 (Semora, North Carolina) 5 FCC Rcd 934 (1990) (community defined as a distinct "geographical population grouping").

of the Lexington-Fayette, Kentucky Urbanized Area and that its proposal will continue to provide a city grade signal to less than 50% of the Urbanized Area, and that thus the Commission would not require a showing that the community is independent of the larger area using the factors outlined in *Faye and Richard Tuck*.<sup>5</sup>

4. We will grant the change of community. As a preliminary matter, although we acknowledge that there are concerns regarding loss of service to the community of Harrodsburg, we believe that the change of community will serve the public interest as a preferential arrangement of allotments. Under priority three of the FM Allotment priorities, the reallocation of Channel 257A to Keene, as the community's first local transmission service, would be preferred to the retention of the channel at Harrodsburg, which would serve priority four, since Harrodsburg has another local transmission service, Station WHBN(AM).<sup>6</sup>

5. We have determined that Keene is a community for allotment purposes. It is recognized by the census, has an elected government, and has other indicia of community status. With respect to the issue of a move-in to the Lexington-Fayette, Kentucky Urbanized Area, we agree that the law is well settled on this subject. Under the policy set forth in our *Report and Order* in MM Docket No. 91-25 (Headland, Alabama and Chatahoochee, Florida),<sup>7</sup> an analysis using the factors in *Tuck* is not required because Keene is not part of the Lexington-Fayette, Kentucky Urbanized Area and petitioner does not propose a facility that would provide a city grade signal to 50% or more of the Lexington-Fayette, Kentucky Urbanized Area.

6. With respect to the relative population gains and losses, we believe that overall there is a public interest benefit from the change of community, despite the fact that there will be a net loss of service from petitioner's proposed site. All of the persons in the loss area receive at least 5 reception services. We believe that there is adequate justification for a finding that the change of community is in the public interest.

7. Channel 257A can be allotted at Keene without a site restriction.<sup>8</sup>

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective September 3, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Harrodsburg, Kentucky	---
Keene, Kentucky	257A

9. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

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<sup>5</sup> 3 FCC Rcd 5374 (1988).

<sup>6</sup> See *Report and Order* in MM Docket No. 94-125, (Fredericksburg, Helotes and Carsonville, Texas), 10 FCC Rcd 6580 (1995) *recon. granted*, 11 FCC Rcd 10516 (1996); *Report and Order* in MM Docket No. 97-72 (Mullins and Briarcliff Acres, South Carolina), 14 FCC Rcd 10516 (1999).

<sup>7</sup> 10 FCC Rcd 10352 (1995).

<sup>8</sup> The coordinates for Channel 257A at Keene are NL 37-56-36 and WL 84-38-31.

10. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Mortenson Broadcasting Company of Central Kentucky, LLC for Station WJMM-FM IS MODIFIED to specify operation on Channel 257A at Keene, Kentucky, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, each licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Mortenson Broadcasting Company of Central Kentucky, LLC, is required to submit rule making fees in addition to the fees required for the applications to effectuate the changes of community from Harrodsburg to Keene, Kentucky.

12. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau at (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau